

EXHIBIT 3

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN
3 GREEN BAY DIVISION
4 -----

5 UNITED STATES OF AMERICA, et al.

6 Plaintiffs,

7 vs.

Case No. 1:10-CV-00910-WCG

8 NCR CORPORATION, et al.,

9 Defendants.
10 -----

11 Videotape Deposition of GARY KLEINRICHERT

12 Wednesday, November 7, 2012

13 9:33 a.m.

14 at

15 Greenberg Traurig, LLP
16 77 West Wacker Drive
17 Chicago, Illinois
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24 Reported by Dawn M. Lahti, RPR/CRR
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Deposition of GARY KLEINRICHERT, 11/7/12 Page 2

1 Videotape deposition of GARY
2 KLEINRICHERT, a witness in the above-entitled
3 action, taken at the instance of the Defendants,
4 pursuant to the Federal Rules of Civil Procedure,
5 before Dawn M. Lahti, RPR, Certified Realtime
6 Reporter, and Notary Public, State of Wisconsin, at
7 77 West Wacker Drive, Chicago, Illinois, on the 7th
8 day of November, 2012, commencing at 9:33 a.m. and
9 concluding at 10:58 a.m.

10 A P P E A R A N C E S:

11 U.S. DEPARTMENT OF JUSTICE, by
12 Ms. Sumona Majumdar
13 P.O. Box 7611
14 Washington, DC 20044-7611
15 Appeared on behalf of Plaintiffs.

16 CRAVATH, SWAINE & MOORE LLP, by
17 Ms. Jennifer A. Jude
18 825 Eighth Avenue
19 New York, New York 10019
20 Appeared on behalf of NCR Corporation.

21 GREENBERG TRAURIG, LLP, by
22 Mr. Frank A. Citera
23 77 West Wacker Drive, Suite 3100
24 Chicago, Illinois 60601
25 Appeared on behalf of P.H. Glatfelter Company.

26 HUNSUCKER GOODSTEIN & NELSON, PC, by
27 Mr. Marc Shapp
28 3717 Mt. Diablo Boulevard, Suite 200
29 Lafayette, California 94549
30 Appeared by phone on behalf of Menasha Corporation.

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1 APPEARANCES CONTINUED:
2 QUARLES & BRADY LLP, by
3 Ms. Nancy Peterson
4 Mr. James E. Goldschmidt
5 411 East Wisconsin Avenue
6 Milwaukee, Wisconsin 53202
7 Appeared on behalf of WTM-1 Company.

8 DAVIS & KUELTHAU, S.C., by
9 Mr. William J. Mulligan
10 111 East Kilbourn Avenue, Suite 1400
11 Milwaukee, Wisconsin 53202
12 Appeared on behalf of Neenah-Menasha
13 Sewerage Commission.

14 von BRIESEN & ROPER, s.c., by
15 Mr. Michael Carlson
16 411 East Wisconsin Avenue, Suite 700
17 Milwaukee, Wisconsin 53202
18 Appeared by phone on behalf of CBC
19 Coating, Inc.

20 ALSO PRESENT: Robert Zellner, Videographer.

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1 E X A M I N A T I O N

2 BY MS. JUDE 6
3 BY MS. MAJUMDAR 45

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10 E X H I B I T S

11 EXHIBIT NO. PAGE MARKED

12 4310 Expert Report 18
13 4311 Supplemental Expert Report 19
14 4312 EPA Memorandum 30

15 (Original exhibits attached to original transcript.
16 Copies of exhibits attached to copies of transcript.)

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1 TRANSCRIPT OF PROCEEDINGS

2 VIDEO OPERATOR: Good morning. We are on
3 the video record. My name is Robert Zellner, and
4 I'm a video technician for Depovision located at 77
5 West Washington Street in Chicago, Illinois in
6 association with Gramann Reporting.

7 The date is November 7th, 2012, and
8 the time is approximately 9:33 a.m. We are present
9 here today at 77 West Wacker Drive on the 31st
10 floor in Chicago, Illinois with reference to the
11 case entitled United States of America vs. NCR
12 Corporation, et al., pending in the United States
13 District Court for the Eastern District of
14 Wisconsin, Green Bay division, Case No.
15 1:10-CV-00910-WCG.

16 The witness is Gary G. Kleinrichert.
17 An audiovisual recording of this deposition is at
18 the request of the defendants. And will the
19 attorneys please identify themselves for the
20 record?

21 MS. JUDE: Jennifer Jude for NCR
22 Corporation.

23 MS. PETERSON: Nancy Peterson, Quarles &
24 Brady for WTM-1 Company.

25 MR. GOLDSCHMIDT: James Goldschmidt,

<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 6</p> <p>1 Quarles & Brady, for WTM-1. 2 MR. MULLIGAN: William Mulligan, Davis & 3 Kuelthau, for Neenah-Menasha Sewerage Commission. 4 MS. MAJUMDAR: Sumona Majumdar with the 5 United States Department of Justice. 6 MR. CITERA: Frank Citera for the 7 Glatfelter Company. 8 VIDEO OPERATOR: On the telephone, 9 please. 10 MR. CITERA: Can you guys on the 11 telephone re-identify yourselves for the purposes 12 of the video? 13 MR. SHAPP: This is Marc Shapp for 14 Menasha Corporation. 15 MR. CARLSON: Mike Carlson for CBC 16 Coating. 17 VIDEO OPERATOR: Thank you. And will the 18 court reporter please identify herself for the 19 record and swear in the witness? 20 GARY KLEINRICHERT, called as a witness 21 herein, having been first duly sworn on oath, was 22 examined and testified as follows: 23 EXAMINATION 24 BY MS. JUDE: 25 Q. All right. Good morning.</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 8</p> <p>1 A. I've been involved in a variety of investigations 2 in the past dealing with financial -- alleged 3 financial misrepresentations and fraud and 4 implementation proprieties. 5 Q. Okay. Have you -- 6 A. And I'm just -- I answered your question relative 7 to the types of disputes as opposed to other types 8 of just general projects in cases I've done where 9 there's not a dispute -- 10 Q. Okay. 11 A. -- or a potential dispute. 12 Q. For disputes, have you been involved in anything 13 related to CERCLA in the past? 14 A. I've been involved in some matters where there are 15 CERCLA claims, yes. 16 Q. Okay. Could you describe your role in those 17 disputes? 18 A. My role in those disputes has been to look at 19 underlying costs which had been incurred to 20 determine and to review the adequacy of the support 21 for those costs. I've also looked at the financial 22 resources and capabilities of some of the parties 23 involved in the -- in the matters. 24 Q. Okay. So have you made a determination of 25 financial ability to pay similar to your opinion</p>
<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 7</p> <p>1 A. Good morning. 2 Q. Could you please state your full name for the 3 record? 4 A. Sure. Gary Kleinrichert. 5 Q. And what's your address? 6 A. My address is 520 North Kingsbury, Chicago, 7 Illinois. I also have a residence in Indianapolis, 8 Indiana, 5697 North Pennsylvania Street, 9 Indianapolis, Indiana. 10 Q. And who do you work for? 11 A. I'm employed by FTI Consulting. 12 Q. Okay. So if you don't understand any of my 13 questions, please just ask for clarification. Also 14 I know you've done this before, but try to give, 15 you know, verbal answers rather than nodding or 16 saying uh-huh. 17 A. Okay, I'll try. 18 Q. And let me know if you need a break. 19 A. Okay. 20 Q. So could you -- could you describe the types of 21 cases that you've been involved in in the past? 22 A. I've been involved in a variety of civil litigation 23 matters in the past. I've been involved in -- when 24 you say cases, I assume you mean disputes? 25 Q. Um-hum, yes.</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 9</p> <p>1 here in the past? 2 A. In CERCLA matters? 3 Q. Um-hum. 4 A. I don't believe I've rendered any opinions with 5 respect to ability to pay in a CERCLA matter. 6 Q. Okay. 7 A. I've done some analysis and some consulting in 8 environmental matters with respect to a party's 9 ability to pay, but I don't believe I've rendered 10 any opinions or testified on such analysis. 11 Q. And have you rendered opinions about financial 12 ability to pay in non-CERCLA matters in disputes? 13 A. Yes. 14 Q. Could you describe -- 15 A. Let me go back. Can you read back that question? 16 (Record read.) 17 THE WITNESS: Yes, I believe so. 18 BY MS. JUDE: 19 Q. Could you describe those disputes in your opinion? 20 A. The disputes that I've rendered such opinions 21 relate to some EEOC claims against parties related 22 to where there are claims related to the actions of 23 employees of corporations and fines that the EEOC 24 was looking to impose and their ability to pay such 25 fines.</p>

<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 10</p> <p>1 Q. Okay. Any other context type of dispute?</p> <p>2 A. I've performed solvency analysis, which one of the</p> <p>3 two tests under a solvency analysis relates to</p> <p>4 ability to pay your bills, so certainly I've done a</p> <p>5 number of those types of calculations as well.</p> <p>6 Q. What is the other aspect of the solvency analysis?</p> <p>7 A. The other general test of a solvency analysis is</p> <p>8 whether the company is solvent, whether the assets</p> <p>9 of the -- the fair value of the assets are greater</p> <p>10 than the fair value of the liabilities.</p> <p>11 Q. And that's different than ability to pay?</p> <p>12 A. Well, there's two tests to determine solvency.</p> <p>13 Q. Those are alternatives, okay.</p> <p>14 A. It's whether or not the fair -- the fair value of</p> <p>15 your assets are in excess of the fair value of your</p> <p>16 liabilities or does the company have the ability to</p> <p>17 pay its bills as they come due.</p> <p>18 And as you're looking at the ability</p> <p>19 of a company to pay its bills as they come due,</p> <p>20 you're looking at what those bills are and the</p> <p>21 company's ability -- projected ability to meet</p> <p>22 those obligations.</p> <p>23 Q. What did you do to prepare for this deposition?</p> <p>24 A. Reread my report, reviewed some of the documents</p> <p>25 that were produced in the case, met with counsel</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 12</p> <p>1 prepare for this deposition?</p> <p>2 A. I spoke to my colleague who I worked -- who worked</p> <p>3 for me on this engagement.</p> <p>4 Q. And who is that?</p> <p>5 A. Brent Miller.</p> <p>6 Q. And what is Brent's job on this engagement?</p> <p>7 A. Brent's job was to assist me in reviewing the</p> <p>8 documentation and performing analysis with respect</p> <p>9 to this matter under my supervision.</p> <p>10 Q. And Brent works for FTI?</p> <p>11 A. Brent works -- yes.</p> <p>12 Q. Did anyone else at FTI assist you in preparing for</p> <p>13 the deposition?</p> <p>14 A. No.</p> <p>15 Q. And did anyone else at FTI assist you in preparing</p> <p>16 your report or your reports?</p> <p>17 A. Can you read back the question?</p> <p>18 (Record read.)</p> <p>19 THE WITNESS: No.</p> <p>20 BY MS. JUDE:</p> <p>21 Q. What is your general understanding of what's at</p> <p>22 issue in this case?</p> <p>23 A. My general understanding of what's at issue in this</p> <p>24 particular case is the government seeking</p> <p>25 reimbursement for certain costs they've incurred</p>
<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 11</p> <p>1 and perhaps other things but generally just</p> <p>2 attempted to make sure I was familiar with the</p> <p>3 document or re-familiar -- re-familiarize myself</p> <p>4 with the documents so that I was conversant with</p> <p>5 respect to them.</p> <p>6 Q. When and for how long did you meet with counsel?</p> <p>7 A. I met with counsel yesterday for approximately</p> <p>8 three hours. I met with counsel this morning for</p> <p>9 30 minutes or so.</p> <p>10 Q. Any other times?</p> <p>11 A. Not in preparation for this deposition.</p> <p>12 Q. When you met with counsel to prepare for this</p> <p>13 deposition, did you review documents?</p> <p>14 A. There were documents in the room. I think we did</p> <p>15 look at some documents.</p> <p>16 Q. Okay. About how many?</p> <p>17 A. Oh, boy, I don't know. That's hard to -- we looked</p> <p>18 at certain documents that are referenced in the</p> <p>19 reports that I've issued. I think we looked at the</p> <p>20 recent 10Q that was filed by NCR, and we may have</p> <p>21 looked at some others.</p> <p>22 Q. Did you review any documents not in Appendix B of</p> <p>23 your more recent supplemental report?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Then did you speak to anyone besides counsel to</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 13</p> <p>1 from the defendants, and I believe the government</p> <p>2 seeking to enforce orders with respect to the</p> <p>3 remediation of the Fox River against those</p> <p>4 defendants, and it's my understanding that the</p> <p>5 trial relates to the second of those two items.</p> <p>6 That's my understanding.</p> <p>7 Q. Could you describe your expertise?</p> <p>8 A. Well, I understand that -- I'm not a lawyer, but I</p> <p>9 do understand that in providing expert testimony,</p> <p>10 that expertise is based upon a person's knowledge,</p> <p>11 experience, education and training.</p> <p>12 I have -- I'm a CPA, and therefore,</p> <p>13 I am -- I think I'm certainly an expert in</p> <p>14 accounting and financial matters. I also have</p> <p>15 other designations in valuations. I also have</p> <p>16 expertise and designations related to forensic</p> <p>17 investigations.</p> <p>18 So in financial/accounting/</p> <p>19 valuation's investigative matters, that's where I</p> <p>20 spend a significant amount of my professional time,</p> <p>21 but I also certainly have worked in a number of</p> <p>22 industries and worked in a number of other more --</p> <p>23 more -- more narrow topics as well in addition to</p> <p>24 those general topics.</p> <p>25 Q. Do you consider yourself an expert in environmental</p>

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<p>1 remediation?</p> <p>2 A. Can you clarify?</p> <p>3 Q. Do you consider yourself an expert in the science</p> <p>4 of environmental remediation?</p> <p>5 A. No.</p> <p>6 Q. Do you consider yourself an expert in the cost of</p> <p>7 environmental remediation?</p> <p>8 A. I -- I have experience with reviewing support for</p> <p>9 costs which are incurred in a variety of contexts</p> <p>10 and I have experience with analyzing trends and</p> <p>11 other projections of cost. I don't have experience</p> <p>12 with respect to the original estimation of cost to</p> <p>13 do a particular cleanup or remediation.</p> <p>14 Q. Do you have any legal training?</p> <p>15 A. No.</p> <p>16 Q. Are you offering a legal opinion?</p> <p>17 A. No.</p> <p>18 Q. And you are being compensated for your involvement</p> <p>19 in this matter?</p> <p>20 A. Yes.</p> <p>21 Q. How are you --</p> <p>22 A. Well, FTI is being compensated for my involvement</p> <p>23 in this matter.</p> <p>24 Q. How is FTI being compensated?</p> <p>25 A. They're being compensated based on the time I spend</p>	<p>1 A. Probably more than 100 hours.</p> <p>2 Q. More than 300 hours?</p> <p>3 A. Probably not more than 300 hours. But I'd have to</p> <p>4 look at the time records and let them stand for</p> <p>5 themselves.</p> <p>6 Q. And how much do you anticipate being paid by the</p> <p>7 end of the trial for your -- for -- and I mean --</p> <p>8 by "you," I mean FTI?</p> <p>9 A. I don't know.</p> <p>10 Q. Approximately how many times have you been retained</p> <p>11 as an expert prior to this matter?</p> <p>12 A. I've -- I don't know. I mean that's a little</p> <p>13 bit -- can you clarify your question? Because</p> <p>14 often I'm engaged not as an expert. I'm engaged to</p> <p>15 perform an analysis with respect to some financial</p> <p>16 or accounting or investigative topic and then later</p> <p>17 I'm asked to testify about it.</p> <p>18 I don't -- I don't know that I'm --</p> <p>19 I'm not typically engaged to be the expert. I'm</p> <p>20 engaged to do an analysis, and then counsel will</p> <p>21 determine whether they would designate me later as</p> <p>22 an expert based upon what I find in -- in that</p> <p>23 phase.</p> <p>24 Q. How many times have you prepared an expert report</p> <p>25 that has been in the context of a dispute that has</p>
Deposition of GARY KLEINRICHERT, 11/7/12 Page 15	Deposition of GARY KLEINRICHERT, 11/7/12 Page 17
<p>1 on this matter on a time and materials basis.</p> <p>2 Q. Time and materials?</p> <p>3 A. Sure.</p> <p>4 Q. What's the materials aspect?</p> <p>5 A. Well, to the extent there's any out-of-pocket costs</p> <p>6 for travel or other types of cost of that type,</p> <p>7 those -- those costs would also be -- FTI would be</p> <p>8 compensated or reimbursed then for those costs.</p> <p>9 Q. Is there any other aspect of your compensation in</p> <p>10 this matter besides a time rate and out-of-pocket</p> <p>11 costs?</p> <p>12 A. When you say "your," are you referencing FTI?</p> <p>13 Q. Yes.</p> <p>14 A. No.</p> <p>15 Q. Do you know how much FTI has been compensated so</p> <p>16 far for its role in this case?</p> <p>17 A. No.</p> <p>18 Q. Do you know what your budget for this case is?</p> <p>19 A. No, I don't think I have a budget.</p> <p>20 Q. And do you know approximately how many hours you've</p> <p>21 worked on this case so far?</p> <p>22 A. I don't have the time estimates in front of you --</p> <p>23 in front of me. I've -- I've spent a significant</p> <p>24 amount of time on this project.</p> <p>25 Q. Any ballpark, more than 100 hours?</p>	<p>1 been served on other parties?</p> <p>2 A. I don't know. I'd have to estimate.</p> <p>3 Q. Could you?</p> <p>4 A. I'd estimate 150 times.</p> <p>5 Q. How many times have you been deposed in a dispute?</p> <p>6 A. Well, that we could figure out by looking at my CV</p> <p>7 which -- which lists my testimony experience. I</p> <p>8 think it's approximately 30 times but that's --</p> <p>9 that's included in the documents I think we have.</p> <p>10 Q. Have you ever been criticized for any expert</p> <p>11 testimony you've been -- you have provided?</p> <p>12 MR. CITERA: I'll object to the form of</p> <p>13 the question.</p> <p>14 THE WITNESS: Can you be more specific?</p> <p>15 BY MS. JUDE:</p> <p>16 Q. Have you ever failed to qualify as an expert on a</p> <p>17 subject?</p> <p>18 A. No.</p> <p>19 Q. Have you ever --</p> <p>20 A. Not as I understand that question. I mean, I think</p> <p>21 that's somewhat of a legal question, but as I</p> <p>22 understand that question, I've never been -- when</p> <p>23 asked to testify or put forth in a proceeding to</p> <p>24 testify, I've never not -- not testified with</p> <p>25 respect to my opinions or been excluded.</p>

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<p>1 Q. Have you ever submitted an expert report to a court 2 that has found it to be inaccurate? 3 A. Not to my knowledge. 4 Q. Are there any other -- 5 A. Can you clarify what you mean by inaccurate? I 6 still think not to my knowledge, but that's an 7 interesting way to ask that question. 8 Q. Has a court in an opinion ever pointed out 9 inaccuracies in a report that you submitted? 10 A. Not to my knowledge. 11 Q. I'm going to hand you a copy of your initial expert 12 report which is dated September 7, 2012. And could 13 we mark this? 14 (Exhibit 4310 was marked for 15 identification.) 16 BY MS. JUDE: 17 Q. It is marked as Exhibit 4310. 18 A. You want me to take that one? 19 Q. Yeah. 20 A. This is -- this appears to be a copy of the report 21 that I authored September 7, 2012 -- 22 Q. Okay. 23 A. -- based upon flipping through it. 24 Q. Right. Let's do the same thing again. I'm going 25 to hand you a copy of your supplemental expert</p>	<p>1 A. Yes. 2 Q. Who? 3 A. Brent Miller assisted me with the initial drafting 4 of certain aspects of the report, but I -- I 5 drafted the report. He worked under my 6 supervision. 7 Q. Approximately when did you begin preparing the 8 report? 9 A. Well, you're referencing two different reports, so 10 I think you have to ask me specifically with 11 respect to each report because that's two different 12 times. 13 Q. Approximately when did you begin preparing the 14 initial report? 15 A. Sometime in late August. 16 Q. Approximately when did you begin preparing the 17 supplemental report? 18 A. Last Thursday or Friday. 19 Q. Did counsel give you feedback on any drafts of 20 either report? 21 A. Yes. 22 Q. How substantial were the edits? 23 MR. CITERA: I'm going to object to the 24 characterization of them as edits. 25 THE WITNESS: I don't remember any edits</p>
Deposition of GARY KLEINRICHERT, 11/7/12 Page 19	Deposition of GARY KLEINRICHERT, 11/7/12 Page 21
<p>1 report dated November 5, 2012 and let's also mark 2 this. 3 (Exhibit 4311 was marked for 4 identification.) 5 THE WITNESS: Similar to the prior 6 exhibit, this appears, based on flipping through 7 it, to be a copy of the report that I prepared and 8 authored dated November 5, 2012. I can't check all 9 the numbers exactly to the original, but it appears 10 to be a copy. 11 BY MS. JUDE: 12 Q. Okay. Unless I say otherwise, when I refer to 13 report, I'm going to be referring to both of these 14 combined. 15 A. Okay. 16 Q. And if I'm referring specifically to one or the 17 other, I'll specify either initial report or 18 supplemental report, but ask me to clarify if 19 something's unclear. 20 A. Okay. 21 Q. Who wrote your expert report? 22 A. I did. 23 Q. Did you draft every section of it? 24 A. Yes. 25 Q. Did anyone else prepare a draft of any part of it?</p>	<p>1 as a result of counsel's feedback. So I would say 2 not substantial because I don't recall the edits. 3 BY MS. JUDE: 4 Q. So do you mean that you did not receive edits from 5 counsel, or you did not make edits as a result of 6 the feedback that you received from counsel? 7 A. Can you read that question back, please? 8 (Record read.) 9 THE WITNESS: With -- I'm not sure I mean 10 either. With respect to the first report, which 11 was months ago, I recall that there was discussion 12 with counsel related to a draft. I don't recall 13 whether there were edits made or not, and if so, I 14 know they weren't substantial. 15 BY MS. JUDE: 16 Q. So what did you mean earlier when you said you 17 didn't receive any edits from counsel? 18 A. I said I don't recall any edits. I don't -- I 19 don't recall any edits -- any particular edits with 20 respect to, for example, the initial report. I 21 don't recall if I made any edits at all or if we -- 22 or if I received some feedback which caused me to 23 make any edits that were unsubstantial because I 24 just don't recall any edits. 25 Q. Okay. Did counsel ask you to make any assumptions</p>

Deposition of GARY KLEINRICHERT, 11/7/12 Page 22	Deposition of GARY KLEINRICHERT, 11/7/12 Page 24
<p>1 about any issues in preparing your report?</p> <p>2 A. I don't know that I would characterize -- counsel</p> <p>3 asked me to -- based upon estimated costs for the</p> <p>4 remediation cleanup to do an analysis of NCR's</p> <p>5 ability to pay those.</p> <p>6 With respect to the amount of those</p> <p>7 costs, and I'm sure you'll ask me some questions</p> <p>8 about that, we looked -- I looked at certain costs</p> <p>9 which -- estimates which have been provided, and I</p> <p>10 discussed the basis of coming to those estimates</p> <p>11 with counsel.</p> <p>12 I don't know that I would</p> <p>13 characterize that as an assumption, but it is a set</p> <p>14 of estimates that are used as the basis for the</p> <p>15 estimated future remediation cleanup costs.</p> <p>16 Q. So you were told to use those estimates, not review</p> <p>17 the estimates and then perform your analysis on top</p> <p>18 of those estimates, is that accurate?</p> <p>19 A. Can you break that up?</p> <p>20 Q. You were asked to not review the estimates</p> <p>21 themselves but just use them as a basis for your</p> <p>22 further analysis?</p> <p>23 A. No, I don't think so. I was asked to look at the</p> <p>24 different estimates that were being made with</p> <p>25 respect to the future costs including the estimates</p>	<p>1 and budgets for future years beyond what is</p> <p>2 included in their SEC disclosures, and I asked them</p> <p>3 if that had been produced, and it had not been.</p> <p>4 It's my understanding it had not been.</p> <p>5 Q. You're saying not produced by NCR or not produced</p> <p>6 by counsel to you?</p> <p>7 A. It's my understanding that that -- those documents</p> <p>8 had not been produced by NCR.</p> <p>9 Q. Do you plan to supplement this report before trial?</p> <p>10 A. I don't know. It depends whether there's more --</p> <p>11 more developments between now and trial that are</p> <p>12 announced.</p> <p>13 Q. If there are developments announced, will you</p> <p>14 supplement your report?</p> <p>15 A. If they're material to my report, I would</p> <p>16 supplement my report so that my report is -- is</p> <p>17 up-to-date as of trial. If there -- if they aren't</p> <p>18 material, either positive or negative, with respect</p> <p>19 to NCR's results and future results and their</p> <p>20 borrowing capacity, then I likely would not.</p> <p>21 But I -- I don't know what NCR could</p> <p>22 announce between now and trial, so to the extent</p> <p>23 NCR makes a meaningful announcement or material</p> <p>24 announcement, I will consider that prior to trial.</p> <p>25 Q. Does that mean that you consider the events between</p>
Deposition of GARY KLEINRICHERT, 11/7/12 Page 23	Deposition of GARY KLEINRICHERT, 11/7/12 Page 25
<p>1 that were provided to me by counsel from the</p> <p>2 government, from an NCR witness and from SEC</p> <p>3 disclosures made by NCR and to -- based upon those</p> <p>4 to -- to derive a conservative estimate of what</p> <p>5 those costs may be for purposes of my analysis, and</p> <p>6 I discussed that with counsel.</p> <p>7 Q. Okay. Did you review each of the final reports</p> <p>8 before they were submitted?</p> <p>9 A. Did I review --</p> <p>10 Q. Did you see the final version?</p> <p>11 A. Of my expert report dated September 7th and of my</p> <p>12 supplemental report November 5th?</p> <p>13 Q. Yes.</p> <p>14 A. Yes, I authored the reports.</p> <p>15 Q. Do you agree with everything said in each report?</p> <p>16 A. I stand by my reports, yes.</p> <p>17 Q. Is there anything in either report that you would</p> <p>18 like to change or amend now?</p> <p>19 A. No, I don't believe so.</p> <p>20 Q. Did you have all the information you needed to</p> <p>21 complete each report?</p> <p>22 A. I believe so.</p> <p>23 Q. And was there any information that you asked for</p> <p>24 from -- of counsel that was not provided to you?</p> <p>25 A. I asked counsel whether NCR had produced forecasts</p>	<p>1 September 7th and November 5th that you cover in</p> <p>2 your supplemental report to be material?</p> <p>3 A. Sure. I think they were meaningful, and they had a</p> <p>4 meaningful impact on the analysis, so I believed it</p> <p>5 was appropriate to be familiar with them. And</p> <p>6 given the nature of the items, I thought it was</p> <p>7 appropriate to supplement my report so that,</p> <p>8 frankly, you would understand what I would likely</p> <p>9 say at trial given my consideration of new</p> <p>10 developments.</p> <p>11 Q. Can you tell me who selected the material for you</p> <p>12 to review?</p> <p>13 A. Is this a general question, or are we talking about</p> <p>14 my supplement, or can you be more specific?</p> <p>15 Q. For both of the reports.</p> <p>16 A. I guess it would be a combination of me and</p> <p>17 counsel. With respect to estimated costs, I asked</p> <p>18 counsel to provide me any information they had with</p> <p>19 respect to witnesses or documents that had been</p> <p>20 produced in the case so that I could understand</p> <p>21 what future estimated costs had been put forth.</p> <p>22 I -- with respect to public filings</p> <p>23 made by NCR and analyst reports, those were</p> <p>24 available to me in -- counsel may have provided</p> <p>25 some of those, but I had access to those in any</p>

<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 26</p> <p>1 event because they're publicly available for both 2 NCR and other entities as well. 3 Q. For the purpose of preparing these reports, did you 4 review -- Strike that. For the purpose of 5 reviewing these reports, besides NCR, which other 6 companies' public filings did you review? 7 A. I think I referenced that in Appendix B. We could 8 look at that, but if you want me to -- 9 Q. If you'd like to, you're welcome to. 10 A. The section in Appendix B under -- which is I think 11 the second page of Appendix B, company filings, I 12 reviewed those company filings which are listed 13 there in Appendix B. And certainly there's 14 companies listed here that are not NCR. 15 Q. You did not review filings of any other parties in 16 this action besides NCR, is that correct? 17 A. I don't -- I don't believe, but I don't know that 18 Appleton Papers is a party to this dispute, so I 19 don't -- I don't want to speak for that. I don't 20 believe they are, but I don't -- I don't -- but I 21 did review -- I did not review -- other than 22 potentially Appleton Papers, I did not review the 23 other parties in this dispute. 24 Q. So you did not review any of the filings of any of 25 the members of the joint defense group?</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 28</p> <p>1 use in your analysis from any of the documents 2 listed under the heading Legal Documents? 3 A. I think we can look at my footnotes, but I do 4 reference, I think, some filings that are legal 5 filings for some of the amounts. 6 Q. Do you know which ones on this list? 7 A. I believe one of the documents that I reference in 8 my report which relates to just one of the data 9 points with respect to costs which had been 10 incurred with respect to the mediation and cleanup, 11 some of those numbers are included and perhaps 12 in -- they're also in other documents as well, but 13 I think they are -- I reference their inclusion in 14 the document entitled NCR Corporation's Memorandum 15 of Law in support of its expedited motion to 16 enforce the 40/60 cost sharing consent judgment 17 against Appleton Papers, Inc. dated August 2, 2012, 18 Docket 468. 19 And we can look at the footnotes, 20 but I believe that filing is referenced to support 21 one of the data points that I reference. 22 Q. Putting costs aside, did you glean from any of the 23 documents under the heading Legal Documents data 24 about NCR's financial condition? 25 A. Let me look at them. Financial condition is such a</p>
<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 27</p> <p>1 A. No, sir -- or no, ma'am. Sorry. 2 Q. Did you personally review all the documents cited 3 in Appendix B? 4 A. Yes. 5 Q. Did anyone prepare summaries of any documents that 6 you considered? 7 A. There were analyses prepared from certain 8 documents. I don't recall any team member, if 9 that's what you're asking, preparing a summary of 10 what was in a document. 11 Q. Or a summary by counsel? 12 A. Not that I recall. 13 Q. Do you consider all the materials that you reviewed 14 for purposes of preparing your report to be 15 accurate? 16 A. I don't have an opinion on whether they're accurate 17 or not. I have no reason to believe they're 18 inaccurate. 19 Q. Okay. In Appendix B, this first subheading, Legal 20 Documents, do you see that? 21 A. I'm sorry, I lost the page. Yes. 22 Q. Are you looking at the supplemental report or the 23 initial report just to make sure we're using the -- 24 A. I'm looking at the supplemental report. 25 Q. Me as well. Did you get financial data that you</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 29</p> <p>1 broad term that it's kind of hard to answer that 2 question no because these documents, for example, 3 reference some of them tens, if not hundreds of 4 millions of dollars which have been paid. Some of 5 them reference insurance recoveries. 6 Q. Um-hum. 7 A. So I think I'd need a more specific question 8 related to what you mean by financial condition in 9 your question to know whether -- I certainly 10 learned an understanding of the case from these 11 legal documents, and I learned some of the history 12 in the case and some of the costs which have been 13 paid in terms of the relationships between the 14 parties which of course have an impact on 15 financial -- historical financial condition as well 16 as insurance recoveries. 17 Q. Your opinion of NCR's ability to pay, did that draw 18 from any information that you found in the 19 documents listed under legal documents that you did 20 not find in public filings? 21 A. Not that I can recall, but I'd have to go back and 22 read these. 23 Q. Okay. 24 A. Certainly I looked mostly to public filings of 25 their financial condition and future results, but</p>

<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 30</p> <p>1 there's a lot of information in these historical 2 legal filings too. 3 Q. I'd like to talk about what you've listed under 4 other documents in Appendix B, specifically I'm 5 reading this EPA memorandum on general policy on 6 Superfund ability to pay determinations. Do you 7 remember reviewing that document? 8 A. I do. 9 (Exhibit 4312 was marked for 10 identification.) 11 BY MS. JUDE: 12 Q. I'm going to hand you what I think is the same 13 document that you've reviewed. I'd like to mark 14 it. Could you read what number we've marked that? 15 A. It's a big number, Exhibit 4312. 16 Q. Could you describe that document to me? 17 MR. CITERA: By describe, you want him to 18 just read the subject matter or -- 19 MS. JUDE: Or I guess -- I don't want 20 him -- I don't want him to read it. 21 BY MS. JUDE: 22 Q. What is it -- what is your understanding of what 23 this document is? 24 A. What the subject -- what the subject matter says 25 and what the first paragraph says.</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 32</p> <p>1 assessment, that you look at the assets available 2 to the company based on looking at its balance 3 sheet. And based upon the time period with respect 4 to determining the company's ability to pay, their 5 expected cash flows during that period of time, 6 which would be consistent with the methodology I 7 described in my report. 8 Q. So you would have used the same methodology to 9 perform your analysis even had you not reviewed 10 this document? 11 A. Well, I didn't have that circumstance, but 12 probably, yes. 13 Q. Let me put it this way. Would you have conducted 14 the same analysis regardless of this document? 15 A. I don't know what you mean. I looked at various 16 sources of guidance on how to -- how -- what method 17 to use. The methodology is very straightforward. 18 It's consistent with what I would do 19 in a solvency or valuation or other ability to pay 20 assessments. As part of that assessment, I looked 21 at the -- whether there was anything from the EPA 22 on their guidance which was consistent with that, 23 so I'm not sure what you mean. I didn't -- I did 24 all that assessment all as part of one process all 25 of which was consistent with one another.</p>
<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 31</p> <p>1 Q. All right. Would you read that into the record? 2 A. This memorandum transmits a policy document 3 developed by the Office of Site Remediation 4 Enforcement, OSRE. That explains what is necessary 5 for an acceptable ability to pay, ATP, settlement 6 in Superfund cases. 7 The main text of the policy document 8 addresses general -- general is bolded -- issues 9 that apply to the ATT -- ATP process and ATP 10 settlements. The policy document also contains two 11 appendices that address issues specific to making 12 ATP determinations for individuals and businesses. 13 And the subject matter is general 14 policy on Superfund ability to pay determinations. 15 It's on United States EPA letterhead. 16 Q. For what purpose did you review this document? 17 A. To understand whether there was anything -- any 18 guidance in any context from the EPA on doing 19 ability to pay assessments. 20 Q. And did this document influence your methodology in 21 performing your analysis? 22 A. I would say it corroborated what I -- my 23 methodology. 24 Q. Could you explain further? 25 A. It corroborated that in making an ability to pay</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12 Page 33</p> <p>1 Q. So the method by which you analyze an entity's 2 ability to pay does not change whether you're 3 operating in a CERCLA context or a non-CERCLA 4 context? 5 A. Well, I looked at in this context whether there was 6 anything in particular, and I also understood that 7 this particular ability to pay determination, as I 8 read it, doesn't necessarily apply directly to the 9 circumstances here but relates to the, as I 10 understand it, the EPA reaching settlements based 11 upon an entity's ability to pay, and this is the 12 assessment they go through to determine whether to 13 make a settlement or to make a reduction. That's 14 what I understand. So I guess I'm -- 15 Q. Are you offering an opinion of what the EPA should 16 do from a stand -- from a policy standpoint in this 17 case? 18 A. No. 19 Q. And what is your understanding of what an EPA 20 Superfund ability to pay determination is? 21 A. My understanding is it's an assessment of the -- 22 what do you mean by what it is? Its purpose, how 23 it's performed? 24 Q. Its purpose. 25 A. I understand its purpose is, as explained in this</p>

<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 34</p> <p>1 memo, when there's some question about the 2 enterprise's ability to pay and their reaching a 3 settlement and their ability to pay determination 4 is to determine -- give an assessment for that 5 purpose. 6 Q. Could you describe the differences between the -- 7 between your methodology and your ability to pay 8 determination and the methodology described in this 9 document? 10 A. I think the general approach is the same. 11 Q. You say general. Is there something specific 12 that's different? 13 A. Well, the general approach in that looking at the 14 balance sheet, the company's ability to use its 15 assets to borrow additional -- its borrowing 16 capabilities as well as its expected cash flows 17 over a period of three to five years, I think the 18 approach is the same. 19 Q. You are not offering a legal opinion related to 20 NCR's ability to pay? 21 A. I'm offering a financial -- an opinion based on a 22 financial analysis. 23 Q. Okay. 24 A. Can we take a break? 25 Q. Yeah.</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 36</p> <p>1 would say without looking through this detailed 2 list. 3 Q. Did you review any non-public information about 4 NCR? 5 A. Well, I don't believe that the -- the document 6 pertaining to the cleanup costs from the 30(b)(6) 7 witness would be public. 8 Q. Is that the -- besides that document, did you 9 review any non-public information about NCR? 10 A. No, with the caveat that a lot of these legal 11 documents have details related to costs which were 12 paid, and those costs aren't described in the 13 detail that the legal documents provide in a public 14 forum, so there are some disclosures related to 15 historical costs and the estimate of the future 16 costs that I think are more specific and not 17 exactly the same as what's in the public filings. 18 Q. Did you review any non-public information about NCR 19 that did not relate to Fox River costs? 20 A. And when you say non-public, you're also -- you 21 would include, as I have, I assume, that analyst 22 reports and other reports of that type are public 23 as long as you buy them. 24 Q. Yes. 25 A. Not that I recall.</p>
<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 35</p> <p>1 A. Going about an hour. 2 VIDEO OPERATOR: Going off the record at 3 10:27 a.m. 4 (Discussion off the record.) 5 VIDEO OPERATOR: And we are back on the 6 record at 10:36 a.m. 7 BY MS. JUDE: 8 Q. Could you list the categories of documents from 9 which you got the information about NCR's finances 10 that you analyzed? 11 A. Well, I do list them in Appendix B, so I think that 12 I do actually -- and I even put them in categories, 13 but I will -- I looked at the public filings, their 14 SEC disclosures, both 10Ks and 8Ks. 15 I reviewed any financial information 16 that had been in various documents that you've 17 previously asked me about. I looked at -- I 18 obtained and reviewed analyst reports. I read 19 transcripts of earnings calls of NCR. 20 I also believe I looked at earnings 21 releases of NCR, and I think I looked at their 22 website and other websites that referenced NCR in 23 their financial -- financial information -- 24 Q. Did you -- 25 A. -- and maybe others, but that's what I would -- I</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 37</p> <p>1 Q. And you didn't have access to any non-public 2 information about NCR as a result of your previous 3 work for FTI, correct? 4 A. I don't understand. 5 Q. As a result of other engagements, did you have 6 access to non-public information about NCR 7 Corporation? 8 A. No. Your question seems to assume that FTI would 9 have non-public information on NCR. I don't know 10 if that's true or not. 11 Q. Okay. Could you describe the categories of 12 documents from which you got information about the 13 Fox River costs? 14 A. The public filings of NCR, the cost estimates put 15 forth by the government, the NCR estimate of future 16 costs, the testimony of the 30(b)(6) witness of 17 NCR, the -- I think those would be the categories. 18 Can you read back my answer? 19 (Record read.) 20 THE WITNESS: And any other reference to 21 historical costs that are included in the various 22 documents produced. 23 BY MS. JUDE: 24 Q. Are you familiar with the litigation between NCR 25 and other parties concerning the Kalamazoo River</p>

<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 38</p> <p>1 cleanup?</p> <p>2 A. I'm familiar with what NCR discloses in its public</p> <p>3 filings with respect to the Kalamazoo River</p> <p>4 cleanup.</p> <p>5 Q. Does your analysis of NCR's ability to pay account</p> <p>6 for NCR's potential liability in that matter?</p> <p>7 A. It considers NCR's liability in that matter, sure.</p> <p>8 Q. And does it consider NCR's liability in other</p> <p>9 litigations?</p> <p>10 A. Sure. It considers what if -- what NCR has</p> <p>11 disclosed with respect to material contingencies or</p> <p>12 commitments and their assessment of the estimated</p> <p>13 losses with respect to those to the extent there's</p> <p>14 any estimated loss.</p> <p>15 Q. When you were initially engaged on this matter,</p> <p>16 what issues were you asked to address by the people</p> <p>17 that hired you?</p> <p>18 A. I was asked to assess NCR's ability to pay</p> <p>19 estimated remediation costs associated with the Fox</p> <p>20 River.</p> <p>21 Q. Could you summarize your opinions in this case?</p> <p>22 A. I think I have summarized them in my report, but if</p> <p>23 you want me to be more succinct than what I've</p> <p>24 already said in my report -- I mean, my report</p> <p>25 stands for itself. I mean, the broad -- and again,</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 40</p> <p>1 material to their financial condition other than</p> <p>2 perhaps for API who has significant financial</p> <p>3 resources, but a payment would be material to them.</p> <p>4 Q. Besides --</p> <p>5 A. That's the summary of my opinion, but I would let</p> <p>6 my opinion speak for itself as I've summarized in</p> <p>7 these various reports.</p> <p>8 Q. Besides what you just described, are you offering</p> <p>9 any other opinions in this case?</p> <p>10 A. I have not been asked to review any other issues.</p> <p>11 Q. Are you offering any opinion about the financial</p> <p>12 condition or ability to pay of any of the other</p> <p>13 parties in this case?</p> <p>14 MR. CITERA: Other than API?</p> <p>15 MS. JUDE: Other than -- let's just say</p> <p>16 other than NCR.</p> <p>17 THE WITNESS: Well, yes. I have looked</p> <p>18 at the other -- what NCR refers to co-obligors as</p> <p>19 well as indemnitors, and the amount of their</p> <p>20 potential liability's clearly immaterial to their</p> <p>21 financial condition.</p> <p>22 The -- with respect to API, I'm</p> <p>23 rendering the opinion that it may be material to</p> <p>24 them, but they do have significant financial</p> <p>25 resources. Beyond that, I'm rendering no further</p>
<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 39</p> <p>1 my reports -- my report in my opinion stands for</p> <p>2 itself, but the broad-based opinion is that</p> <p>3 NCR's -- based upon the estimated Fox River site</p> <p>4 remediation costs estimated on a very conservative</p> <p>5 basis based upon the various data points available</p> <p>6 to estimate what those future costs might be --</p> <p>7 anyway, looking at those costs and coming to a very</p> <p>8 conservative estimate as to what they may be</p> <p>9 between now and 2017, that even without considering</p> <p>10 any obligations of what NCR refers to as co -- a</p> <p>11 co-obligor or indemnification indemnitors, NCR</p> <p>12 clearly has the ability to pay based upon their</p> <p>13 current financial position, their borrowing</p> <p>14 capacity and their estimated future results to pay</p> <p>15 all of those costs.</p> <p>16 Additionally, if you consider the</p> <p>17 indemnification amounts from AT&T and</p> <p>18 Alcatel-Lucent, that even further enhances that</p> <p>19 ability to pay. And furthermore, if you consider</p> <p>20 obligations of API and/or BAT, it even -- and the</p> <p>21 indemnification payment from AT&T and</p> <p>22 Alcatel-Lucent, it even further enhances their</p> <p>23 ability to pay and that the financial condition or</p> <p>24 financial wherewithal of the various co-obligors</p> <p>25 and/or indemnity parties, such payments wouldn't be</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 41</p> <p>1 opinion with respect to their ability to pay.</p> <p>2 BY MS. JUDE:</p> <p>3 Q. Are you offering any opinion about the financial</p> <p>4 condition or ability to pay the Fox River costs of</p> <p>5 any of the members of the joint defense group?</p> <p>6 A. No.</p> <p>7 Q. So you're not offering an opinion about Glatfelter,</p> <p>8 for example?</p> <p>9 A. No.</p> <p>10 Q. And you're not offering an opinion about the</p> <p>11 ability to pay of any of the other non-JDG parties</p> <p>12 such as the City of Appleton?</p> <p>13 A. No, I'm not offering any such opinion. I haven't</p> <p>14 been asked to perform any such analysis.</p> <p>15 Q. You've only been asked to perform an analysis of</p> <p>16 the financial condition and ability to pay of NCR</p> <p>17 and its co-obligors, is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Are you offering an opinion about NCR's ability to</p> <p>20 pay relative to any other parties in this matter?</p> <p>21 A. I don't know what you mean.</p> <p>22 Q. Are you offering an opinion about whether NCR is</p> <p>23 more or less able to pay the Fox River costs as</p> <p>24 compared with any other party to this litigation?</p> <p>25 A. No.</p>

<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 42</p> <p>1 Q. Are you offering an opinion concerning NCR's 2 liability? 3 A. Can you clarify what you mean, their legal 4 liability? 5 Q. Yes. 6 A. I'm rendering no legal opinion on their liability. 7 Q. Did you perform an independent estimate of the 8 costs of the Fox River remediation? 9 A. I relied on NCR's estimates of the costs associated 10 with the Fox River. I also looked at other data 11 points such as the government's, and I chose 12 amounts from the various NCR estimates that end up 13 likely overstating the estimated cost because I 14 chose amounts that were -- for 2012, I considered 15 their 2012 estimate since the estimate they 16 provided from the 30(b)(6) witness was in mid-2012. 17 Q. Um-hum. 18 A. For periods beyond that, I relied upon information 19 in their public disclosures which likely included 20 more than just the remediation costs and which is a 21 much higher number than NCR testified to with 22 respect to their estimated cost in 30(b)(6) witness 23 testimony to be conservative. 24 Q. But you relied on estimates provided by others in 25 the first instance, is that correct?</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 44</p> <p>1 costs. 2 Q. Um-hum. 3 A. I also -- so I haven't -- in my analysis, I haven't 4 put forth any additional costs above what they 5 under generally accepted accounting principles 6 would have disclosed as their liability. 7 I also note the magnitude of the 8 potential exposure, I think, is disclosed as 9 76 million or something of that and claims with 10 respect to some share of that. 11 So given the results of the rest of 12 my analysis, that should NCR be liable ultimately 13 for some amount greater than what they under 14 generally accepted accounting principles believe is 15 their best estimate currently, I don't believe that 16 that would change my opinion because of the 17 magnitude of what we're discussing. 18 Q. So in your analysis, you considered NCR's exposure 19 in the Kalamazoo matter to be its legal costs as it 20 disclosed? 21 A. My analysis only accounts for litigation costs as 22 they have. I considered the ultimate exposure and 23 whether it on a sensitivity analysis would impact 24 my opinions, and I don't believe it would. 25 MS. JUDE: Okay. That's all I've got.</p>
<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 43</p> <p>1 A. Yes. 2 Q. Do your reports contain all of the opinions that 3 you expect to give at trial? 4 A. My reports contain all the opinions that I've been 5 asked -- asked to render based on the analysis I've 6 been asked to do to this point. If counsel were to 7 ask me to do some other analysis or look at some 8 other issues between now and trial, that's -- I 9 don't know if they will or won't. 10 Q. Right now assuming counsel doesn't ask you to 11 perform additional work, do your reports contain 12 all of the opinions that you would offer at trial? 13 A. Yes, subject to your question earlier with respect 14 to any material developments from NCR in the 15 interim. 16 Q. I want to circle back to one thing we were 17 discussing earlier, the Kalamazoo litigation. Do 18 you recall that? 19 A. Yes. 20 Q. Do you remember how much you assumed NCR's 21 potential liability in that case would be when you 22 performed your ability to pay analysis? 23 A. Well, NCR discloses in their financial results that 24 the appropriate reserve for Kalamazoo is for the 25 legal costs, the litigation -- estimated litigation</p>	<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 45</p> <p>1 MS. MAJUMDAR: I have just a few 2 questions. 3 THE WITNESS: Sure. 4 EXAMINATION 5 BY MS. MAJUMDAR: 6 Q. It's still morning. Good morning. 7 A. Good morning. 8 Q. As you heard earlier, my name is Sumona Majumdar. 9 I'm with the United States Department of Justice. 10 I do have just a couple questions. 11 A. Okay. 12 Q. In your analysis, did you consider whether it's 13 possible that NCR could go bankrupt in the -- in 14 the years that it's expected to pay remediation 15 costs? 16 A. My analysis does -- my analysis would indicate that 17 the likelihood of them going bankrupt would be very 18 remote. There's no information that would lead you 19 to conclude that the company's in danger of a 20 bankruptcy. 21 Q. But it is possible that NCR could go bankrupt 22 between now and 2017? 23 A. I can't testify as to what is -- I can't opine to 24 what is possible. Based upon their current 25 financial condition and based upon the results that</p>

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<p>1 they have achieved and their executive's comments</p> <p>2 with respect to their forward-looking information,</p> <p>3 they have a very remote likelihood of going</p> <p>4 bankrupt, but to the extent some event might occur,</p> <p>5 I don't -- I don't know. I don't have an opinion</p> <p>6 that they couldn't go bankrupt.</p> <p>7 Q. So it is possible, although in your opinion, remote</p> <p>8 chance?</p> <p>9 A. Sure. Anything -- I mean, it's possible.</p> <p>10 Q. Would your analysis change if the costs of</p> <p>11 remediation significantly increase over what's</p> <p>12 anticipated?</p> <p>13 A. My analysis would -- if -- would change. It would</p> <p>14 depend how much those costs would increase to</p> <p>15 determine whether or not the opinion would change.</p> <p>16 I believe that the costs I've used based upon the</p> <p>17 estimates that I've been provided in my</p> <p>18 understanding of them is very, very conservative.</p> <p>19 For example, my estimate of the</p> <p>20 costs that I've used -- the estimate of the costs</p> <p>21 used for my analysis is meaningfully greater than</p> <p>22 the amount that NCR estimated it would be just a</p> <p>23 few months ago.</p> <p>24 Q. But it is possible that the costs could increase,</p> <p>25 say, 50 percent over what's anticipated?</p>		<p>1 record at 10:58 a.m. Thank you.</p> <p>2 (Deposition concluded at 10:58 a.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 47</p> <p>1 A. You're asking -- you're asking me if it's possible</p> <p>2 or you're asking me if my analysis has considered</p> <p>3 that?</p> <p>4 Q. If the costs were to increase 50 percent more,</p> <p>5 would that change your analysis?</p> <p>6 A. If the costs were increased 50 percent more, my</p> <p>7 analysis would be impacted by that 50 percent, but</p> <p>8 under that -- under that scenario, I think it's</p> <p>9 pretty clear my conclusions would not change.</p> <p>10 Q. And just to clarify. You did not -- you are not</p> <p>11 offering an opinion on any of the parties -- sorry,</p> <p>12 any of the ability to pay of any of the joint</p> <p>13 defendants?</p> <p>14 A. I am not.</p> <p>15 Q. And you did not review their ability to pay?</p> <p>16 A. I did not.</p> <p>17 MS. MAJUMDAR: That's all I have.</p> <p>18 MR. CITERA: Anyone on the phone?</p> <p>19 MR. CARLSON: No, thank you.</p> <p>20 MR. SHAPP: No, thanks.</p> <p>21 MR. CITERA: Nothing from my end.</p> <p>22 VIDEO OPERATOR: Anything further?</p> <p>23 MS. PETERSON: Nothing here.</p> <p>24 VIDEO OPERATOR: This concludes the</p> <p>25 deposition of Gary G. Kleinrichert. We're off the</p>		<p>Deposition of GARY KLEINRICHERT, 11/7/12</p> <p>Page 49</p> <p>1 STATE OF WISCONSIN } 2 MILWAUKEE COUNTY } ss: 3 4 I, Dawn M. Lahti, RPR, Certified 5 Realtime Reporter, and Notary Public in and for the 6 State of Wisconsin, do hereby certify that the 7 preceding deposition was recorded by me and reduced 8 to writing under my personal direction. 9 I further certify that said 10 deposition was taken at 77 West Wacker Drive, 11 Chicago, Illinois, on the 7th day of November, 12 2012, commencing at 9:33 a.m. 13 I further certify that I am not a 14 relative or employee or attorney or counsel of any 15 of the parties, or a relative or employee of such 16 attorney or counsel, or financially interested, 17 directly or indirectly, in this action. 18 In witness whereof, I have hereunto 19 set my hand and affixed my seal of office on this 20 9th day of November, 2012. 21 22 23 DAWN M. LAHTI, RPR 24 Certified Realtime Reporter 25 Notary Public My commission expires April 17, 2016.</p>	

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